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EXAMINER

NGUYEN, PHU HOANG

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

MAILED

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GROUP 1700

Application Number: 10/751,119
Filing Date: January 05, 2004
Appellant(s): MEHIO, NIZAR YOUSSEF

Michael Keith Blankenship
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/4/2007 appealing from the Office action mailed 8/24/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

Art Unit: 1791

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is deficient. 37 CFR 41.37(c)(1)(v) requires the summary of claimed subject matter to include: (1) a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by reference characters and (2) for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. The brief is deficient because the applicant does not mention independent claim 24.

The examiner provides the summary of the claimed invention (for independent claim 24) as follows:

Art Unit: 1791

The invention disclosed in claim 24 claimed a modular hookah includes a base and a stem. A base is dimensioned to contain a substantial amount of fluid with a threaded upper end for receiving dry smoke. A stem is threaded to the base, terminating in a selectively releasable peripheral down tube dimensioned to substantially penetrate said base, and defines a dry smoke aperture oriented to conduct dry smoke into said base and a wet smoke aperture oriented to accept wet smoke from the base.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: the applicant mentions independent claim 24 is being rejected under 35 U.S.C. 103 (sections VI and VII of the Brief). However, independent claim 24 is being rejected under 35 U.S.C 102. The examiner assumes that the applicant really meant to appeal dependent claim 27 which is being rejected under 35 U.S.C 103.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

1513147	Zahariadis, Nikolaos	10-1924
722405	Ganim, B.	03-1903
3872872	Kahler, Richard W.	03-1975
3451785	Rohlfing et al.	06-1969

Art Unit: 1791

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Hereinafter, the format "26 [...]" is a double citation referring the reader to Applicants claim number (underlined) and prior art being cited (in brackets).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 24, 40, and 43-45 rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 1,513,147 to Zahariadis ("Zahariadis").

Zahariadis teaches:

a base, dimensioned to contain a substantial amount of fluid, with a threaded upper end for receiving dry smoke 24 [figure 1]; and a stem (member 3 or members 3 and 6), having a threaded lower end configured to mate with said threaded upper end of said base, terminating in a selectively releasable peripheral down tube (element 16) dimensioned to substantially penetrate said base, said stem defining a dry smoke aperture oriented to conduct dry smoke into said base and a wet smoke aperture oriented to accept wet smoke from said base 24 [figure 1] .

a base (element 1) with a threaded connection for receiving dry smoke and dimensioned to contain a substantial amount of fluid an intermediate tube (element 6) with a threaded connection; a threaded plenum (element 3), releasably attached in gaseous communication with said intermediate tube, having a down tube for releasing dry smoke into said base; and wet smoke conducting means (space inside element 18), disposed within said plenum and in gaseous communication with said base, for accepting and conducting wet smoke from said base 40 [figures 1 and 3] .

said dry smoke means further comprises a separable down tube with a threaded connection adapted to releasable attach said separable down tube to said threaded plenum 43 [figure 1] .

pressure stabilizing means¹ in gaseous communication with said base 44 [figure 1] .

a cover means (element 9) adapted to house a substantial portion of the dry smoke conducting means 45 [figure 1] .

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1791

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 25, 27-29, and 31-33 are rejected under 35 U.S.C 103(a) as being unpatentable over Zahariadis as applied to claim 24 above, and further in view of the fact that it is notoriously well known that a male-female threading arrangement can be replaced with a female-male threading arrangement. It would be obvious to provide an internally threaded upper end of the base and a externally threaded lower end of the stem because reversing such threading is well known 25 [figure 1]. Zahariadis additionally teaches:

· said stem comprises: an intermediate tube (element 3), having an upper end and a lower end, defining said dry smoke aperture; a plenum (plenum is interpreted broadly to include such meanings as 'a space filled with matter as opposed to a vacuum) (space encompassed by element 5 having both wet and dry smoke passage) further defining said dry smoke aperture and defining said wet smoke aperture, said plenum having an upper end adapted to removably fasten to said lower end of said intermediate tube; and wherein said down tube has an upper end adapted to removably fasten to said plenum 27 [figure 1]

Art Unit: 1791

an intermediate tube upper cap (element 8) in releasable attachment to both said intermediate tube and said burner 28 [figure 1]

an intermediate tube lower cap (element 5) in releasable attachment to both said intermediate tube and said plenum 29 [figure 1]

said intermediate tube is adapted to threadably fasten to said plenum and said plenum is adapted to threadably fasten with both said down tube and said base 31[figure 1]

a burner adapted to removably fasten to said intermediate tube 32 [Figure 1]

said burner is adapted to threadably fasten to said intermediate tube 33 [figure 1].

Therefore, it would have been obvious to obtain the invention as specified in claims 25, 27-29 and 31-33 based on the disclosure of Zahariadis.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zahariadis as applied to claim 27 above, and further in view of the fact that it is notoriously well known to protect important parts of an apparatus with a cover or casing. It would be obvious to cover the intermediate tube of Zahariadis with a bag, casing, shielding, housing, or any number of other forms of protection which could be classified as a cover because doing so would protect the function of the device. Therefore, it would have been obvious based on Zahariadis to obtain the invention as specified in Claim 30.

Claims 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ganim in view of United States Patent No. 3,872,872 to Richard Kahler

Art Unit: 1791

("Kahler") and further in view of United States Patent No. 3,451,785 to R. G.

Rohlfing et al. ("Rohlfing") as applied to claim 38 below.

• Ganim discloses:

A burner (P in figure 1),

A threaded intermediate tube (F in figure 2) releaseably attached in gaseous communication with said burner (see attachment in figure 1),

a threaded plenum (D in figure 2 and all the space within D), releasably attached in gaseous communication with said threaded intermediate tube (see attachment in figure 1), defining a wet smoke aperture (B3 in figure 4 indicating the annular space through which the wet smoke would pass) for releasing wetted smoke to a user and further having a down tube (H in figure 1) for releasing dry smoke; and

a threaded base (see obvious to thread base above), releasably attached in gaseous communication with said plenum, dimensioned to contain a substantial amount of fluid for receiving and wetting dry smoke (A in figure 1) 36.

Ganim does not disclose the burner being threaded. Kahler discloses screw threads as being a well known means of attachment. It would have been obvious to one having ordinary skill in the art to substitute the slip on fitting of Ganim with the screw on fitting of Kahler because such fittings are recognizes as equivalents (Ganim col.2 ln. 52-60).

Art Unit: 1791

Regarding Claim 37: Ganim discloses a down tube (H in figure 1) that is threaded and in gaseous communication with the plenum. The down tube is also releaseably attached to the plenum (threading at H1 in figure 2).

Pressure Relief valve: Ganim does not disclose a pressure release aperture obstructed by a pressure relief valve on hookah, or the threading of that pressure relief valve. Rohlfing describes the use of pressure relief valves (col. 1 lines 30-37) to protect vessels from overpressure as "well known." Kahler describes screw threads as a well known means of connection (col. 4 lines 12-15) It would be obvious to provide a pressure relief valve obstructing a pressure release aperture on the stem of the hookah, at the plenum or in other appropriate locations and to use a threaded connection to connect that valve. The motivation for doing so is that a pressure relief valve would reduce the likelihood of an overpressure or underpressure of the vessel and that detachable components favor easy cleaning (Ganim Col. 2 lines 52-60). Rohlfing is analogous art to Ganim because it is pertinent to the problem of unsatisfactory pressure within the hookah.

Regarding Claim 38: Claims 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ganim and Kahler as applied to claim 37 above, and further in view of Rohlfing. For the reasons stated above in the section entitled "Pressure Release Valve" it would have been obvious to a person having ordinary skill in the art to include a pressure release aperture obstructed by pressure release valve as described in Rohlfing in the plenum of the hookah set out in Ganim and Kahler to obtain the invention as specified in claim 38.

Art Unit: 1791

Claims 34, 35, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zahariadis as applied to claim 24 above, and further in view of Ganim and Kahler. Rohlring and Kahler disclose what Zahariadis fails to disclose expressly, namely that pressure relief valves are used for protecting vessels and that screw threads are a common means of connection. Rohlring is analogous art to Zahariadis because it is pertinent to the problem of unsatisfactory pressure within the hookah. Kahler and Zahariadis are analogous because Kahler relates to a problem posed by Zahariadis, namely what are acceptable means of attachment. It would be obvious to use a screw attachment to attach a pressure relief valve to the stem/plenum because screw attachments are well known means of attachment and pressure relief valves protect vessels. Therefore, it would have been obvious to combine Rohlring and Kahler with Zahariadis to obtain the invention as specified in Claims 34, 35, and 39.

(10) Response to Argument**A. Rejection of claim 24 under 35 U.S.C. 103.**

The examiner assumes that the applicant meant to state "Rejection of claim 27 under 35 U.S.C 103" to reflect the argument of dependent claim 27 instead of independent claim 24.

Applicant essentially argues that the Examiner asserts that Zahariadis discloses Applicant's plenum in Zahariadis's element 5 (Examiner's Action 4/3/2007, page 4) and this strained assertion is not unexpected in an attempt to characterize a single piece stem as a multiple-piece stem. Zahariadis's element 5 is a packing material and this packing material includes none of the structure of

Art Unit: 1791

Applicant's plenum as recited in claim 27 and retained from the claims 24 and 26 from which it depends. Furthermore, the applicant argues the awkward structural analogy might lead one to believe that the Examiner was mistakenly discussing Zahariadis's element 3 or 1; such cannot be the case.

In reviewing the examiner rejection of dependent claim 27, it is found that the examiner define the plenum as a space encompassed by element 5 having both wet and dry smoke passage further defining said dry smoke aperture and defining said wet smoke aperture, said plenum having an upper end adapted to removebaly fasten to said lower end of said intermediate tube and wherein said down tube has an upper end adapted to removably fasten to said plenum (Examiner's Action 4/3/2007, page 4 lines 10-15). The examiner does not assert that Zahariadis discloses Applicant's plenum in Zahariadis's element 5 but rather element 5 was used as a reference sign on figure 1. Furthermore, as described by the examiner in Examiner's Action 4/3/2007, the space encompassed by element 5 and one of ordinary skill in the art to rearrange screw threading meet the limitations of claim 27. It is also noticed that claimed device with rearrangement of parts is held unpatentable because the rearrangement of the device would not have modified the operation of the device (see In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950) . It is also noticed that fact that a claimed device is making separable is not sufficient by itself to patentably distinguish over an otherwise old device unless there are new or unexpected results (see In re Dullerg, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961).

B. Rejection of claim 36 under 35 U.S.C 103

Art Unit: 1791

Applicant argues that a stem with multiple segmentations is neither taught nor suggested by Kahler or Ganim. Applicant states that Applicant claims and both Kahler and Ganim disclose removable burners, however beneath their burners, Kahler and Ganim disclose only unitary stem portions while Applicant further divides his tem into a removable plenum and a removable intermediate tube. Furthermore, Applicant argues that the Examiner's office actions erroneously characterize elements as having attributes and structure that they do not possess. The Examiner finds a burner as Ganim's element P in his Fig. 1; a threaded intermediate tube as Ganim's element F in his Fig. 2 and a threaded plenum as Ganim's element D in his Fig. 2. The Applicant asserts that Ganim's element P is not a burner, but a tobacco bowl; element F is not an intermediate tube, but a crown that is properly analogous to Applicant's burner; and element D is not a plenum, but is instead a post, which is merely a unitary, specialized stem lacking any dry smoke transport capabilities. Furthermore, assertions equating Ganim's post to Applica'n's plenum are tortured by Applica'n's claim 36 limitation that the plenum includes a down tube to release the dry smoke into the hookah base. The Ganim post can never release dry smoke; it never receives any.

Upon reviewing Ganim and Examiner's Action 4/3/2007, pages 5-6, it is found that Ganim's element P can be a burner since Ganim discloses that P is the bowl having a concave receptacle P³ for holding the tobacco and passages P⁴, P⁵, and P⁶ leading into the opening P², through which the smoke passes into the tube H (page 1, lines 46-50). Therefore, Ganim's element P is properly analogous to Applicant's burner since it holds and burns tobacco then passes

Art Unit: 1791

smoke down to tube H. Furthermore, Ganim's element F can be an intermediate tube locates underneath the burner P and in gaseous communication with the burner as shown on Fig. 2 of Ganim. On page 5 of the Examiner's Action 4/3/2007, it is found that the Examiner asserts D and all the space within D correspond to the Applicant's threaded plenum. Therefore, D and all the space within D is capable of transporting dry smoke (portion of tube H within D) and wet smoke as indicated by reference sign I.

Applicant also argues that Examiner never cites any suggestion or motivation within the art to segment a hookah stem into a plenum and an intermediate tube. Examiner asserted that "it would be obvious to further segment the components... of Ganim using threaded connections for... releasable attachment because doing so would allow easier cleaning of the Ganim hookah". Further segmenting the Ganim stem would not allow easier cleaning because elongate down tube of the Ganim hookah allows dry smoke to completely by pass the interior of the Ganim stem. Dry smoke from the Ganim hookah is funneled to the base in a manner that avoids the entire interior of the Ganim stem; thus the interior of the Ganim stem would not accumulate dry smoke residue and not require cleaning. Applicant suggests that there would be no motivation to clean a component that does not require cleaning. Applicant also asserts that a person of ordinary skill in the hookah manufacturing art would not turn to the Khaler water pipe reference to create a segmentable stem for cleaning purposes. In conclusion, the applicant argues that in addition to the aforementioned portability and cleaning aspects of a segmented stem; ther is,

Art Unit: 1791

Applicant has discovered, a significant economic consequence to having a distinct plenum connected to a distinct intermediate tube. The typical hookah includes both a dry smoke inlet and the wet smoke outlet in a single, unitary stem. A hookah user having a corroded wet smoke outlet need only change the plenum rather than the entire hookah stem.

Upon reviewing Ganim, Khaler and Examiner's Action 4/3/2007, pages 5-6, it is found that Ganim discloses the construction of a hookah with several elements or parts of the pipe are made detachable which are readily removed to be cleaned or duplicated thus avoiding the disadvantages of the pipes now in use, in which all the several elements are made integral thus preventing duplicating any element or readily cleaning the said pipe (page 1, lines 52-60). Therefore, Ganim already taught the advantages of making a hookah separable instead of integral prior to the Applicant alleged discovery of making the hookah separable. Furthermore, the Applicant is referring to the space I (fig. 2) of Ganim that does not contact with dry smoke to accumulate dry smoke residue and therefore the Applicant asserts that it would not require cleaning. However, the interior space of D has contact with wet smoke that would still at least be a reason for one of ordinary skill to clean out the wet smoke residue. In regarding to Kahler, Examiner used Kahler discloses of screw threads as being well known means of attachment rather than a motivation to create a segmentable stem.

C. Rejection of claim 40 Under 35 U.S.C 102

Applicant argues that Zahariadis does not disclose an intermediate tube; an intermediate tube as claimed by Applicant would require a segmented stem,

Art Unit: 1791

and Zahariadis merely discloses a unitary stem. The Examiner points to the tobacco bowl of Zahariadas in attempting to find an intermediate tube as disclosed by Applicant. Furthermore, Zahariadis does not disclose a threaded plenum. In attempting to find a plenum as disclosed by Applicant, the Examiner points to the hollow member of Zahariadas. Most importantly, the hollow member of Zahariadis is a conduit only configured to allow the transport of wet smoke. Applicant's plenum is a conduit for both dry smoke from the intermediate tube and wet smoke from the base.

Upon reviewing of Zahariadis and corrected Examiner's Action 4/3/2007 (the Examiner inadvertently inserted element 18 instead of element 3, this inadvertently insertion was corrected in the ground of rejection above), it is found that element 6 of Zahariadis meet the limitation of the claim 40 regarding an intermediate tube with a threaded connection although it might be called a burner cup by the Applicant. Furthermore, element 3 of Zahariadis also meet the limitation of a threaded plenum of the Applicant. As shown on figure 1, element 3 of Zahariadis is releasably attached in gaseous communication with said intermediate tube, having a down tube for releasing dry smoke into said base and wet smoke conducting means, disposed within said plenum and in gaseous communication with said base, for accepting and conducting wet smoke from said base.

D. Indefiniteness rejection of newly amended claim 24

Art Unit: 1791

Applicant comments on the newly amended claim 24 submitted after final is deem moot since the newly amended claim 24 was not entered as indicated by Advisory action 8/24/2007.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

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Conferees:

APPEAL CONFeree: 

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